

## ATTACHMENT 4

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15 *America Electronic Components, Inc.*

12 UNITED STATES DISTRICT COURT  
13 NORTHERN DISTRICT OF CALIFORNIA  
14 (SAN FRANCISCO DIVISION)

15 IN RE: CATHODE RAY TUBE (CRT)  
16 ANTITRUST LITIGATION

Case No. 07-5944 SC  
MDL No. 1917

17  
18 This Document Relates to  
19 Case No. 13-cv-1173-SC (N.D. Cal.)

20 SHARP ELECTRONICS CORPORATION.,  
21 *et al.*,

22 Plaintiffs,

23  
24 v.

25 HITACHI, LTD., *et al.*,

26 Defendants.  
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**DECLARATION OF  
MATTHEW N. FRUTIG IN  
SUPPORT OF THE TOSHIBA  
DEFENDANTS' REPLY IN  
SUPPORT OF THEIR MOTION  
TO DISMISS SHARP'S FIRST  
AMENDED COMPLAINT**

DECLARATION OF MATTHEW N. FRUTIG IN SUPPORT OF THE TOSHIBA DEFENDANTS' REPLY  
IN SUPPORT OF THEIR MOTION TO DISMISS SHARP'S FIRST AMENDED COMPLAINT

Case No. C 07-5944-SC

MDL No. 1917

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1 I, Matthew N. Frutig, hereby declare as follows:

2 1. I am attorney with the law firm of White & Case LLP, counsel for Defendants  
3 Toshiba Corporation, Toshiba America, Inc., Toshiba America Information Systems, Inc.,  
4 and Toshiba America Electronic Components, Inc. (collectively, the "Toshiba Defendants").

5 2. I submit this declaration in support of the Toshiba Defendants' Reply in  
6 Support of their Motion to Dismiss Sharp's First Amended Complaint, filed  
7 contemporaneously herewith. I have personal knowledge of the facts stated herein, and I  
8 could and would competently testify thereto if called as a witness.

9 3. Attached hereto as Exhibit A is a true and correct copy of excerpts from the  
10 Defendants' Joint Notice of Motion and Motion to Compel Arbitration, *In re TFT-LCD*  
11 *Antitrust Litigation*, No. 11-00058, (N.D. Cal. July 25, 2011), ECF No. 31.

12  
13 I declare under penalty of perjury under the laws of the United States of America that  
14 the foregoing is true and correct.

15  
16 Executed this 20<sup>th</sup> Day of November, 2013, in Washington, D.C.

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19 Matthew N. Frutig  
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DECLARATION OF MATTHEW N. FRUTIG IN SUPPORT OF THE TOSHIBA DEFENDANTS'  
REPLY IN SUPPORT OF THEIR MOTION TO DISMISS SHARP'S FIRST AMENDED COMPLAINT

Case No. C 07-5944-SC

MDL No. 1917

## Exhibit A to the Frutig Declaration

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 17 *America Information Systems, Inc.*

18 **UNITED STATES DISTRICT COURT**

19 **NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION**

20 IN RE: TFT-LCD (FLAT PANEL)  
 21 ANTITRUST LITIGATION

Case No. 3:07-md-1827-SI  
 MDL No. 1827

22 This Document Relates to:

23 Case No. 3:11-cv-00058-SI

**DEFENDANTS' JOINT NOTICE OF  
 MOTION AND MOTION TO COMPEL  
 ARBITRATION**

**ORAL ARGUMENT REQUESTED**

24 **COSTCO WHOLESALE CORPORATION,**

25 **Plaintiff,**

26 **v.**

27 **AU OPTRONICS CORPORATION, et al.,**

28 **Defendants.**

**Date:** August 26, 2011  
**Time:** 9:00 a.m.  
**Dept.:** Courtroom 10, 19th Floor  
**Judge:** Hon. Susan Illston

1 claims brought by Costco have been found to be arbitrable. *See Mendez v. Palm Harbor Homes,*  
2 *Inc.*, 45 P.3d 594, 599 (Wash. Ct. App. 2002) (“In Washington it is well settled that [Consumer  
3 Protection Act] and other statutory claims are subject to arbitration under the FAA.”); *Crown*  
4 *Homes, Inc. v. Landes*, 22 Cal. App. 4th 1273, 1280 (Cal. Ct. App. 1994) (“[T]here is nothing in  
5 the arbitration statutes or the Cartwright Act which indicates that an antitrust claim is not  
6 arbitrable.”); *Aztec Med. Servs., Inc. v. Burger*, 792 So.2d 617, 622 (Fla. Dist. Ct. App. 2001).  
7 There is no reason to believe that Costco’s Illinois or Arizona state-law claims are not arbitrable  
8 as both States’ laws favor the enforcement of arbitration agreements. *See D.E. Wright Elec.,*  
9 *Inc. v. Henry Ross Const. Co., Inc.*, 538 N.E.2d 1182 (Ill. App. Ct. 1989) (“Arbitration is a  
10 favored method of resolving disputes in Illinois.”); *U.S. Insulation, Inc. v. Hilro Const. Co., Inc.*,  
11 705 P.2d 490, 498 (Ariz. Ct. App. 1985).

12 **E. All of Costco’s Claims Against All Defendants Must Be Arbitrated**

13 Costco must arbitrate its claims with Samsung Electronics America, Inc. and Sharp  
14 Electronics Corp.—Defendants with which it indisputably entered into express agreements to  
15 arbitrate. *See Amsil Holdings Ltd. v. Clarium Capital Mgmt.*, 622 F. Supp. 2d 825, 830 (N.D.  
16 Cal. 2007).

17 **Costco similarly must arbitrate with Defendants whose affiliates entered into arbitration**  
18 **agreements with Costco—the other named Samsung and Sharp Defendants, as well as the**  
19 **named Epson, Toshiba and LG Defendants—as a Plaintiff is estopped from refusing to arbitrate**  
20 **with a corporate family member alleged to be liable for overcharges incurred on an affiliate’s**  
21 **contract.** *See Fujian Pacific Elec. Co., Ltd v. Bechtel Power Corp.*, No. C 04-3126 MHP, 2004  
22 WL 2645974 at \* 6 (N.D. Cal. Nov. 19, 2004) (stating that “[w]hen the charges against a parent  
23 company and its subsidiary are based on the same facts and are inherently inseparable, a court  
24 may refer claims against the parent to arbitration even though the parent is not formally a party  
25 to the arbitration agreement”) (quoting *J.J. Ryan & Sons, Inc. v. Rhose Poulenc Textile, S.A.*,  
26 863 F.2d 315, 321-22 (4th Cir. 1988)); *JLM*, 387 F.3d at 177-78. While that alone would be  
27 enough for these Defendants to require Costco to abide by its own arbitration terms, Costco  
28 moreover alleges that all members of corporate families were “active, knowing participants” in



1 the alleged conspiracy (Compl. ¶ 50) and treats all corporate family members as a single entity,  
2 claiming that “the conspiracy was implemented by subsidiaries and distributors within a  
3 corporate family.” (Costco Opp. at 15.) Because Costco alleges that all members of  
4 Defendants’ corporate families are liable for their affiliates’ alleged actions, Costco must  
5 arbitrate with the named Defendants even where their agreement to arbitrate was with a non-  
6 named affiliate of that Defendant.

7 The fact that not all Defendants are signatories to a Vendor Agreement with Costco does  
8 not mean they are not entitled to arbitrate Costco’s claims against them. “[A]n obligation to  
9 arbitrate does not attach *only* to those who actually signed the agreement to arbitrate.” *Amisil*,  
10 662 F. Supp. 2d at 830; *JLM*, 387 F.3d at 177 (“under principles of estoppel, a non-signatory to  
11 an arbitration agreement may compel a signatory to that agreement to arbitrate”). A signatory to  
12 an agreement to arbitrate, like Costco, can be compelled to arbitrate claims where it has been  
13 alleged that the non-signatory parties are agents or that their liability is otherwise intertwined  
14 with the agreement to arbitrate. See *Mundi v. Union Security Life Ins. Co.*, 555 F.3d 1042, 1046  
15 (9th Cir. 2009); *Fujian Pac. Elec. Co. Ltd.*, 2004 WL 2645974, at \*6 (“A signatory cannot . . .  
16 have it both ways: it cannot one the one hand, seek to hold the non-signatory liable pursuant to  
17 the duties imposed by the agreement, which contains an arbitration provision, but on the other  
18 hand, deny the arbitration provision’s applicability because the defendants is a non-signatory.”);  
19 *Hawkins v. KPMG, LLP*, 423 F. Supp. 2d 1038, 1050-52 (N.D. Cal. 2006) (same, quoting *MS*  
20 *Dealer Serv. Corp. v. Franklin*, 177 F.3d 942, 947 (11th Cir. 1999)); *Hansen v. KPMG, LLP*,  
21 No. CV 04-10525-GLT, 2005 WL 6051705, at \*3 (C.D. Cal. Mar. 29, 2005) (compelling a  
22 plaintiff signatory to arbitration where “[p]laintiff’s allegations plead interdependent and  
23 concerted misconduct” by a signatory and non-signatory defendants). Since Costco has already  
24 agreed to arbitrate all claims related to its LCD purchasing contracts, the only issue for the Court  
25 to decide is whether Costco’s claims relate to its purchases of LCD products.

26 Here, Costco alleges that interdependent and concerted conduct by all Defendants, acting  
27 as one, caused injury to Costco for its purchases under all of its LCD Vendor Agreements. It  
28 alleges that all Defendants participated in a single conspiracy. (Compl. ¶ 1.) It alleges that each

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**V. CONCLUSION**

For these reasons, Defendants respectfully request that the Court compel Costco to arbitrate its claims against all Defendants and stay this action in its entirety.

Respectfully submitted,

Dated: July 22, 2011

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Attestation: The filer of this document asserts that the concurrence of the signatories  
thereto has been obtained.